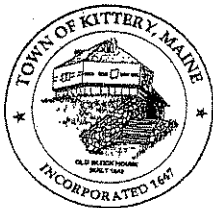


NEW 10/6/14

# **WORKSHOP MATERIAL**



**TOWN OF KITTERY, MAINE**  
200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1329 Fax: (207) 439-6806

**OCTOBER 6, 2014**  
**COUNCIL WORKSHOP**  
**AGENDA**  
**6:00 P.M.**

THE KITTERY TOWN COUNCIL WILL CONTINUE THEIR DISCUSSION FROM THE  
SEPTEMBER 8<sup>TH</sup> WORKSHOP WITH THE PLANNING BOARD ON  
PROPOSED AMENDMENTS TO TITLE 16

Posted: October 2, 2014

"PROS & CONS"  
FROM BOARD MEMBERS

**Chris DiMatteo**

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**From:** Tom <b-e@comcast.net>  
**Sent:** Thursday, September 18, 2014 12:05 PM  
**To:** Chris DiMatteo  
**Subject:** Re: PB Draft Agenda for 9-25

My thoughts on the NRA/septic issues:

Pros:

1. The ordinances might actually work to slow growth & protect the environment as intended.
2. The hopefully will stir up a long simmering debate.
3. They're finally off our plate.

Cons:

1. We could be sued.
  - A. For the usual "taking" reasons
  - B. Because the comp plan is out of date - see Susan's arguments.
  - C. Because the implementation strategies in the Comp Plan do not include this one.
  - D. There is no statistical evidence that skeptics are a problem
  - E. The experts have told us that all MDEP & federal regs can be met.
  - F. Has this been legally tested?

Tom

Tom Emerson

Pros:

1. Who knows, it might work as intended.
2. It puts the issues out there to be debated. The Comp Plan is fifteen years old and was compromised almost immediately. How do people feel now? The public input for the Comp Plan update has been sparse.

Cons:

1. The measure is anti-planning - it kicks the important issues down the road. Most of the really difficult issues we've had are a result of this kind of thinking...see Roylos & Sparkewitz. We should be addressing the ultimate buildout of any property.
2. It repudiates the cluster concept we spent so much time putting together. It will not protect open space, (also a goal of the Comp Plan) it will induce sprawl. See 6B. Reducing sprawl is a state goal. Automobile centric development has caused many of the roads in, out and around Kittery to become lined with houses, disregarding the regional pattern of development that existed for centuries.
3. It prioritizes certain issues from the comp plan over others. It degrades the rural character and scenic views experienced by townspeople & visitors for the sake of a relatively few property owners, effectively asking the rest of town, by virtue of a decreased tax base, to finance the enjoyment of the few.
4. Reducing supply will increase demand, leading to affordability issues. Affordability is a responsibility that should be shared.
5. It will get the town sued:
  - a. Potentially for a "taking", which probably will not work, but the town would still pay to defend.
  - b. We're trying to fix a problem we haven't proven exists. Where is the empirical data to define the number of failed contemporary septic systems, the statistics indicating worsening groundwater as a result of new development and the professionally prepared documentation illustrating a causal link between the two? Are we trying to eliminate cavities by not having teeth? If this community does not have an effective septic management administration policy, why not fix that.
  - c. We met with a group of civil, soil & septic experts who told us that the current ways of doing septs and managing storm water runoff could be managed within the guidelines of the agencies tasked with environmental protection.
  - d. Has the Maine DEP endorsed this concept as a way of improving the situation?
  - e. Have other communities attempted legislation of this kind and has it passed legal testing?
  - f. The MMA has told us this isn't a great way to go about accomplishing the specific goal from the Comp Plan that is being addressed here and suggested another way.
6. We are tasked with directing intense development to the sewerred areas of town.
  - a. This only reduces, slows or stops development in certain areas - effectively a denial. How then does it direct?
  - b. Have real estate developers been consulted to determine how they would address this type of development? I've asked and received feedback that is of a concern to me.
    - i) Developers of the real estate product typically being placed in these areas are not the same developers who would do mixed use development elsewhere. They would simply be directed out of town.
    - ii) How the parcels get built out in a three at a time scenario may well induce sprawl, reduce open space and negatively impact scenic views and the character they impart. I can illustrate.
  - c. Where is the companion inducement to develop in a more intense way in the sewerred areas of town? How do we attract developers who would work in these areas?
7. Negative public perception. There is a feeling among many in town that this measure is intended primarily to protect the property & interests of a select few members of this board and their cronies. If we are to "direct" more intense development to other places, what are the rights of those property owners to have their self interests protected in ordinance.

## Chris DiMatteo

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**From:** Bob Melanson <bobm@sjmservicesinc.com>  
**Sent:** Wednesday, September 17, 2014 12:17 PM  
**To:** Chris DiMatteo  
**Subject:** RE: Proposed provision re: Subdivisions and septic

Chris,

My chief concern is that this policy puts the "planning" cart before the rights of property owners horse. Current example the Betty Welch project where the 80 acres goes from 24 lots to ¾ or an arbitrary devaluation from \$ 2,400,000 to \$ 300 to 400 , a drop of more than 80%.

Bob

**From:** Chris DiMatteo [mailto:CDiMatteo@kitteryme.org]  
**Sent:** Wednesday, September 17, 2014 9:55 AM  
**To:** Ann Grinnell; Bob Melanson; Deb Driscoll; Karen Kalmar; Mark Alesse; Susan Tuvevson; Tom Emerson  
**Subject:** Proposed provision re: Subdivisions and septic  
**Importance:** High

Good morning.

Just a reminder that at the last meeting we spoke of pulling together discussion purposes at next Thursday's meeting a list of implications associated with the proposed provision limiting the units of a subdivision where subsurface wastewater disposal is required.

Please email your lists by noon tomorrow so I can assemble and add to your meeting packets.

Thanks  
Chris

**Christopher Di Matteo**  
Interim Town Planner  
200 Rogers Road, Kittery Maine 03904  
(207) 439-6807 Ext. 303 / (207) 475-1323 (Direct Line)  
[cdimatteo@kitteryme.org](mailto:cdimatteo@kitteryme.org)

## **Issues for Consideration re: Proposed Septic Ordinance/Slowing Growth in Specific Area**

### **1. Legal consequences should be thoroughly vetted before ratification.**

A review of Maine case law on point by town counsel and legal department of the MMA should be presented to the Town Council and the public, who ultimately shoulders the cost of litigation.

Following such review, Town Council may, in the public forum, weigh costs and benefits of slowing growth in a targeted area of Kittery.

### **2. Existing Comprehensive Plan cannot reflect current Kittery economic condition**

Development, and attendant property tax revenue, a major source of income for Kittery, should not be modified based on a document that is out of date.

Ratified in 2002, the Kittery Comprehensive Plan, does not take into account the town's present and projected fiscal health after the US and global historic economic downturn. MMA data show that Maine towns are all affected by static or declining revenue and rising costs.

A thorough economic analysis is warranted before adopting ordinance that slows growth in a majority of Kittery's area, and to confirm whether a proposed limit of any number of dwellings per year in this area, or in any area, has merit for short- and long-term projected income proficiency.

### **3. An ordinance to slow growth in any area of Kittery should be truthfully stated as such**

Adoption of the proposed septic ordinance is encouraged by proponents as being justified by the comprehensive plan. It can be argued that strict application of septic installation practices benefit ecologically sensitive areas.

The ultimate goal of this ordinance, however, is to slow growth in a major portion of Kittery without taking into public consideration the legal and economic effects on the entire town. As a matter of fairness, slowing growth as the target consequence should be clearly stated and openly referenced.

Assuming responsibility for our town's economic health is everyone's task. As much as citizens in an area of town would prefer to relegate their responsibility to others, for any length of time, their ability to opt out should be closely examined for deleterious economic effects which may occur in other parts of town as a result.

## Pros/Cons septic limit amendment -- KK

### CONS:

- A large parcel could not be subdivided to its current maximum limit at one time.
- The above would require owners of such lots to divide over time to maximize the profit from their land.

### PROS:

- Landowners may still divide their parcels over time to maximize profit.
- Amendment complies with State law by implementing several directives of the Comp Plan:
- It directs large-scale development to areas with sewer and water,
- Promotes slow growth in rural areas that are designated low or no growth,
- Helps prevent overbuilding, protecting property values of homeowners,
- Helps preserve rural character by allowing low-intensity cluster development,
- Protects watersheds, wetlands and habitat,
- Discourages suburban sprawl.
- It is not a moratorium.
- No new limits on development in areas with sewer. And allows low-intensity development in areas without sewer.
- Three-house clusters mimic a historic settlement pattern that shaped the way the town looks.

## Pros & Cons of Proposed Septic Amendment

### Cons:

May require property owners of larger parcels to develop land more slowly.

If a sunset provision is added, then the public will have ample opportunity to put this ordinance to the test, knowing it can be amended in the future if warranted.

### Pros:

Begins to accomplish what the 2002 Comprehensive Plan intended 12 years ago without requiring a 3 acre minimum lot size.

Slows growth in the areas where we do not and will not have town sewer.

Will help keep our historic pattern of growth in check to approximately 20 new homes per year.

Helps protect our ecosystem and precious water supply.

Encourages growth where we want it and discourages growth where we do *not* want it.

We have to start somewhere and I think this is a good place to start.



Planning Board Recommended Amendment to Kittery LUDC  
concerning development in rural areas that cannot be connected to public sewer.

Pros and Cons

*Prohibit Subsurface Waste Disposal systems in subdivisions with four or more lots/dwelling units.*

**Cons**

**Pros**

Owners of large parcels of land may object.	A majority of people in Kittery and throughout Maine support the management of growth, and state law requires it.
Land owners won't be able to maximize their selling price for land that has been in their family for years.	Property is zoned to encourage the responsible stewardship of the Town to protect what is in the best interests of the majority of us who have invested here.
This is a "moratorium" on development.	<i>False.</i> The dictionary definition of a moratorium is "a suspension of activity," which this is not. This merely slows the development of rural and environmentally sensitive places.
OK. If <u>not</u> a moratorium, it will <u>still</u> slow the creation of subdivision developments in rural parts of Kittery.	<i>True.</i> In accordance with the will of the people. Townspeople voted strongly in favor of preventing over-development in rural Kittery and Kittery Point. Our <i>Comprehensive Plan</i> is quite clear on this.
This violates a land owner's property right to do with his land what he wants.	No right is absolute. Zoning Laws protect towns and villages from ugly sprawl, whether is be too much housing or the inappropriate placement of commercial or industrial facilities.
This is over-regulation in view of the advanced pre-treatment septic systems that eliminate the possibility of environmental hazards, no matter what the soil is like or if there is ledge rock.	No septic system is foolproof. Not all are installed properly. Few are systematically monitored. With all the waste from dozens of houses going into one common leach field a Biomat of accumulated waste will eventually prevent the cleansing/absorption of dangerous effluent, which ends up in the environment.
What if a developer were made to set aside money for addressing potential environmental problems resulting from a major housing development?	Requiring developers to set aside funds for long term damage arising from projects makes sense. But it does not address the near-unanimous desire to steer growth <i>away</i> from rural Kittery, to protect the environment and preserve the historic settlement pattern.
What do we say to land owners who feel they won't get the most out of selling their land if it can't be sold to a big development company?	There are many ways to market land. A high quality house built on a twenty acre lot has almost unlimited upside potential in the increasingly hot southern Maine coastal real estate market.

This makes Kittery seem elitist, like we doesn't want to let new people move in.	Kittery is not an institution, nor is it a government. It is a <i>place</i> and a <i>community</i> of people living here now. We have a right and responsibility to preserve the town's historic character. Slow growth preserves continuity of place, honors our history, and enables us to manage living together without the major social problems found in densely populated areas.
The people who support this amendment should buy a land owner's land if they don't want it to be developed.	The people who value rural Kittery have sought to find a middle-ground between a true moratorium and a development <i>free-for-all</i> . This thoughtful solution carves out a space right in the middle of competing viewpoints and values.
Property rights are being abridged by this proposal.	As towns may do in order to preserve the character of of Maine. A majority of Kittery residents have no objection to development, as long as it happens in neighborhoods where it is environmentally safe, won't diminish the historic character of our Town, and won't affect the value of their property. One to three homes have a smaller impact (and a lesser chance of being a dreadful mistake) than major subdivisions built on virgin land with poor soil.
This will prevent a land owner from making the most money possible when selling.	<i>False</i> . No one has a right to their "imagined" return on investment. This amendment may mean that a different business model for sale and use of the land will have to be utilized in order to maximize profit.
Impact on large property-owners' rights is unfair.	Everyone living in Kittery have property rights, not just large land-owners. Abutters and neighbors to proposed developments have property rights that are diminished when overdevelopment changes the character of Kittery.

#### Final thoughts:

The Planning Board is aware of the two sides of this argument and has done all that could be done to find this solution, which occupies a middle ground. Please remember that this package took over 200 man-hours of work by the subcommittee and many hours by the entire board to reach this stage.

Most assuredly, our proposal *does not stop development*. It *slows* development in rural areas. It will be opposed by big developers who: a.) do not share our concerns for preserving the character of Kittery, b.) probably do not live in Kittery, and c.) almost certainly don't feel about Kittery the way that we who live here do.

The way to preserve the character of Kittery (and it's investment value) is to adhere to the historic settlement pattern which the centuries have shaped, and which make the town look the way that it does. That's a profoundly important matter to many of us who live here and who know Kittery. Along Rt. 103, for example, one house has been built at a time facing the road. This part of town is a scenic byway of true historic importance and beauty.

Many parts of the town have their own settlement patterns which make them distinctly and charmingly unique to Maine. To ignore this and permit suburban style development in rural areas would be philistine, at best, and self-

destructive at worst. Self-destructive because it would destroy what makes Kittery unique and highly valuable as a real estate investment. No one would visit our increasingly well-known town to bicycle or run if it lost its identity and looked like every other suburban subdivision. No matter how well designed or expensive, no one visits a suburban subdivision for its charm and historical interest. They are all essentially the same. Kittery is one-of-a-kind.

We must make every reasonable effort to preserve the historically authentic Maine character of our town, or we will surely lose it in the next ten to twenty years. The Planning Board urges the Town Council to pass these measures as drafted, and trust that we have put in the time, intelligence and creativity to present you with a solution you can trust.

## Chris DiMatteo

---

**To:** Legal Services Department  
**Subject:** RE: Kittery - septic restriction amendment

**From:** Legal Services Department [mailto:Legal\_Services\_Department@memun.org]  
**Sent:** Monday, September 29, 2014 12:55 PM  
**To:** Chris DiMatteo  
**Subject:** RE: Kittery - septic restriction amendment

Dear Chris,

I have no problem with your Comp Plan's objective to steer intensive development toward sewered areas and limit it in unsewered areas. And of course you're entitled to implement this objective by ordinance. My concern all along has been that a restriction on "subdivisions" of four or more units fails to capture equally intensive development that's not a subdivision. Just two examples:

First, A gifts half of his land to B, a relative, and each simultaneously builds a duplex, for a total of four units. Many land use attorneys doubt this is a subdivision.

Second, A, B, C and D each own abutting lands, and each simultaneously builds a single-family dwelling, for a total of four units. This is definitely not a subdivision.

A restriction that applies only to "subdivisions" would therefore be only partially effective. As a result, it may also be legally suspect because it may not be rationally designed to accomplish your Comp Plan's objective. (A regulation must be a rational means of achieving a legitimate objective in order to be lawful. Again, your objective is fine, but I'm not sure your means are.)

I don't know how substituting "development" for "subdivision" fixes this because "development" would have to be defined in some fashion that captures the two examples I gave above as well as others scenarios that are not subdivisions but that generate the same intensity of development. I don't know how to do that.

What I do know is that the impetus to establish "urban" and "rural" areas and to steer growth toward the former and away from the latter has been a central theme of municipal planning in Maine since the 1980s, so other communities must have developed some satisfactory strategies for doing so. Mandatory cluster development, building permit quotas, and possibly large-lot zoning come to mind, but these are only conversation-starters. As I am not a planner, my recommendation is that you reach out to your colleagues in the professional planning community here in Maine and ask them for their ideas.

I hope this is responsive, Chris.

Best,

**Richard P. Flewelling, Assistant Director**  
Legal Services Department

**Maine Municipal Association**  
60 Community Drive, Augusta, ME 04330  
1-800-452-8786 (in-state)  
207-623-8428  
FAX 207-624-0187  
[legal@memun.org](mailto:legal@memun.org)

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The question is could the amendment to restrict development not connected to sewer be revised in a way that would alleviate the concerns initially flagged by MMA?

I have attached the intro to the land use section of the current Comp Plan for context.

There is clear direction to direct growth, and I know MMA has articulated the Town's right to adopt law that supports the goals of the comp plan.

However, if we applied the proposed provision across the board and all development is subject to the limitation, no more than three dwellings on septic, would that pass legal scrutiny?

(development "means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.")

Other than the mechanics to enforce it, I would imagine there may be other issues around actual pattern of growth that results from the proposed restrictions not meeting the Comp Plan's goals, i.e. to reduce sprawl and increase open space.

Thanks for your efforts to help us through the weeds on this initiative.  
(you, Breana, and the rest of the crew)

Chris

Link to the entire Comp Plan: [http://www.kitteryme.gov/Pages/KitteryME\\_CompPlan/index](http://www.kitteryme.gov/Pages/KitteryME_CompPlan/index)

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**From:** Karen Kalmar [mailto:those7@comcast.net]

**Sent:** Tuesday, September 23, 2014 1:31 PM

**To:** Chris DiMatteo

**Cc:** Tom Emerson

**Subject:** Re: Kittery - septic restriction amendment

C -- Forgive delay, just cleared the guests out.

Sorry but no, it doesn't answer my question entirely.

In our definitions, development "means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring." I read that definition to include every kind of development (single home, mixed-use... whatever), not just residential subdivisions. So the amendment would apply to all.

The Comp Plan directs us to steer 'intensive' development to sewerred areas and to limit, not prohibit, residential development in areas without town services. That makes the three-house restriction seem defensible. Determining relative intensity was based, in part, on the percentage of our annual need for dwelling units (20/year). Four units would account for 20 percent and is therefore large-scale/intensive.

Relative intensity also incorporates the idea of how many septic systems are placed in one location at one time. Environmental risks increase as that number rises, especially in clusters with reduced lot sizes. The Comp Plan links concerns about soil capacity, water quality and residential density. If MDEP's septic regs addressed all forms of septic-related pollution, this would be less of a concern, but

how changing "subdivision" to "development" would help since I don't what "a development of four or more lots or dwelling units" means or how it may be different from a subdivision.

One alternative I suggested during our phone conversation on September 3<sup>rd</sup> was a "rate of growth" ordinance (see 30-A M.R.S.A. Section 4360). While a cap on the number of building permits issuable during any given year might not be a perfect solution, it would have the advantage of applying to all new residential units, regardless of whether they are part of a subdivision or not.

I hope this clarifies matters, Chris. Please let me know if I can be of any further assistance.

Best regards,

**Richard P. Flewelling, Assistant Director**  
**Legal Services Department**  
**Maine Municipal Association**

60 Community Drive, Augusta, ME 04330

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207-623-8428

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**From:** Chris DiMatteo [<mailto:CDiMatteo@kitterymen.org>]

**Sent:** Monday, September 22, 2014 10:31 AM

**To:** Legal Services Department; Richard Flewelling

**Cc:** Tom Emerson; Karen Kalmar

**Subject:** FW: regulatory taking def.

**Importance:** High

Good morning:

I was hoping that MMA legal might be able to assist us on a short notice inquiry. (see below)

This is a continuation of a recent inquiry that Mr. Flewelling helped with so I copied him as well.

Any input prior to our planning board meeting this Thursday evening would be most helpful.

Thanks

Chris

## Chris DiMatteo

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**From:** Legal Services Department <Legal\_Services\_Department@memun.org>  
**Sent:** Tuesday, September 23, 2014 9:47 AM  
**To:** Chris DiMatteo  
**Subject:** RE: Kittery- regulatory taking def.

Dear Mr. Di Matteo,

Thanks for bearing with us as we divvy up your questions.

As you are aware, the Takings Clause of the Fifth Amendment of the U.S. Constitution and Article I, §21 of the Maine Constitution prohibit the taking of private property for public use without just compensation. There are two types of categorical takings, physical and regulatory. A physical taking is the physical appropriation of private property, such as taking land for a right of way. A regulatory taking is when the use of the government police power authority goes too far in limiting the use and enjoyment of property.

A regulation is considered a regulatory taking (or inverse condemnation) when it denies a landowner "all economically beneficial or productive use of land." (*MC Assoc. v. Town of Cape Elizabeth*, 773 A.2d 439, 442 (Me. 2001)). To make this determination, the value of the property before the governmental restriction is compared to the value after the restriction is imposed. The restrictions must be "so substantial as to strip the property of all practical value." (*Wyer v. Board of Environmental Protection*, 2000 ME 45).

Courts are generally conservative when determining whether a regulation goes too far as to deprive a property of all economic or practical value. For example, in *MC Assoc. v. Town of Cape Elizabeth* the court did not find a regulatory taking when restrictions due to a wetland ordinance rendered a property unbuildable. There was a drastic reduction in the fair market value and economic expectations of the property, but the property still had some economic value so it was not considered a taking. Similarly, in *Hall v. BEP* (528 A.2d 453 (Me. 1987)), the court found that even though the property owner could not do what they wished with their property, some seasonal and transient uses of the property remained. The property could be used for picnicking, parking, and recreational use, therefore when the board denied a variance from the State's Sand Dune Law it did not constitute a taking.

In general, courts are more likely to find a taking when the government action is considered a physical rather than a regulatory taking. It is recognized that municipalities have a broad power to enact regulations, such as zoning, in order to promote the health and safety of residents. For regulations to be challenged as a regulatory taking there must be such a severe impact on private property that renders it essentially devoid of any economic and practical value.

I hope that this general overview helps in your upcoming meeting. If you need more specific advice, please don't hesitate to ask and we can talk through this more. Takings issues can be complicated, so it is also advised that you consult with local counsel if you are amending or enacting a regulation that may implicate a taking.

**Breana N. Behrens, Staff Attorney**  
**Legal Services Department**

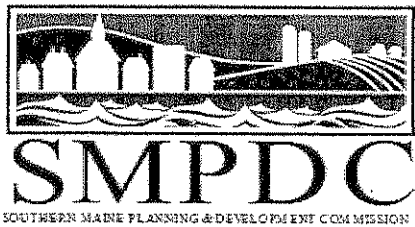
**Maine Municipal Association**  
60 Community Drive, Augusta, ME 04330

Also, since MMA's only concern about the septic amendment was that the ordinance should apply equally to all, I'd be interested in their opinion of the amendment if we removed the language limiting it to residential subdivisions and perhaps substituted "**in a development**, with four or more lots or dwelling units."

You probably know that last year a bill was proposed (LD 1039) that would have redefined regulatory taking to mean "a burden caused by regulation imposed on a property owner's use of the property owner's real property resulting in a diminution in fair market value." It would also have required compensation such diminution (or a waiver). It would have been limited to State law only. The bill died in joint committee, being unanimously rejected. The MMA came out against this bill, as it would have made it impossible to enact important legislation in pursuit of legitimate State goals. One of their examples was that there couldn't have been Shoreland zoning with such a law in place.

Sorry so late with this request. Endless summer company. Today's overnight guests were meant to arrive at lunchtime, just got a call that they're coming NOW. Dogs barking. Gotta go. THANK YOU!!! -- KK





Serving the Municipalities of Southwestern  
Maine

October 2, 2014

Chris Dimatteo, Interim Planning Director  
Town of Kittery  
200 Rogers Rd Ext., Kittery, Maine 0390  
Via e-mail

**RE: Amendments to Chapter 16.8**

Chris,

I have had the opportunity to review section 16.8.7.2 of the proposed ordinance changes which you are looking to use as a growth management tool. I have several thoughts pertaining to the use of this wording in your ordinances. I would like to focus on the proposed wording in section A. as follows:

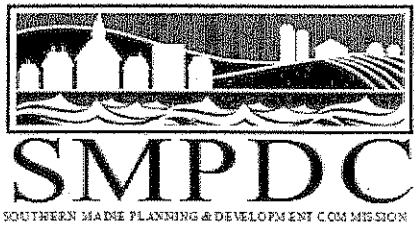
16.8.7.2 Subsurface Wastewater Disposal System

A. Subsurface wastewater disposal is not permitted in a residential subdivision with four or more lots or dwelling units.

During our conversations by phone it was my understanding that this wording was being proposed as some sort of a development cap or growth cap to limit development in the non-sewer regions of the community. In my estimation the use of this wording as a growth management tool would probably be considered illegal under the premise for which it is being used. If the carrying capacity of the land (soil) would allow for additional units as well as the zoning and parcel size allowing for additional development then I think the town might be hard pressed if someone chose to legally challenge that ordinance wording as a taking by the community.

There are several other ways that I would suggest you consider trying to achieve the same type of outcome.

1. I would consider a traditional style of growth cap which is to limit the number of building permits allowed on a yearly basis throughout the town. This is guided by State Law Title 30-A 4360.
2. I would suggest that the wording as proposed in Chapter 16.8.7.1.B certainly seeks to require sewer extensions if the line is within 1,000 feet of the parcel proposed for development. This goes a long way to address the issue of subsurface pollutants.



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Maine

3. I would look to the issue of zoning and would it make more sense to down zone the property to large lot sizes in the areas that are not sewered.
4. You could consider more restrictive septic system designs in those areas that are environmentally sensitive.
5. I would also site that you are proposing a contradiction to the 16.8.7.2 section of the ordinance with section 16.8.7.1.E which encourages the use of gang systems for subdivisions where sewer is not available.

E. When town sewer connection to the parcel and/or proposed lots is not feasible, the Planning Board may allow individual or common subsurface wastewater disposal systems to be used in accordance with Section 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques such as, but not limited to, horizontal/directional boring and low pressure sewer. The developer's information must be accompanied by findings and recommendations of the town Peer-Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. (MODIFIED & MOVED FROM 16.8.7.1.B)

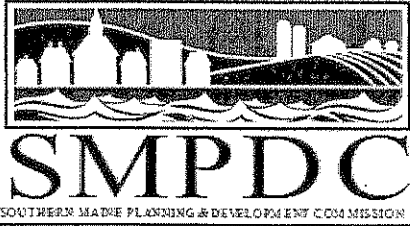
I would feel very uncomfortable with just trying to limit the number of units to 3 effectively unless there is some underlying environmental issue that the Comprehensive Plan points to slow the impacts of non-sewered development areas within the community. I would suggest that since these were proposed a while ago and since you are going through a Comprehensive Plan update, to hold off on these changes and wait until a clear concise objective is developed for a future Land Use Policy that gives the board direction in this area.

I would be happy to come and meet with your board to discuss any of the issues if they would like. Please keep me in the loop as you proceed through this process.

Best Regards,

Lee Jay Feldman  
Director of Planning

ljf/LJF



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Maine

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